

IOWA OFFICE OF THE CHIEF INFORMATION OFFICER
CONTRACT NUMBER 14-10-PMO-01

Between

OFFICE OF THE CHIEF INFORMATION OFFICER
And
Eagle Creek Software Services

IN WITNESS THEREOF, the parties hereto have executed this Contract on the day and year last specified below.

OFFICE OF THE CHIEF INFORMATION OFFICER

By: _____ SIGNED _____
Robert von Wolffrad, Chief Information Officer

Date: __10/24/2014_____

EAGLE CREEK SOFTWARE SERVICES

By: _____ SIGNED _____

Date: __10/23/2014_____

SERVICES CONTRACT

This Agreement for professional services and other deliverables (this “Agreement”), made and effective as of October 10, 2014 (“Effective Date”), by and between the State of Iowa, acting by and through the Office of the Chief Information Officer (the “Department”) and Eagle Creek Software Services, a corporation organized under the laws of Minnesota (the “Contractor”); each individually a “party” and collectively the “parties”. The parties enter into this agreement pursuant to authority granted to the OCIO, Iowa Code 8B.24 (5c). This authority authorizes the OCIO to enter into agreements for the purchase of information technology pursuant to a contract let by another governmental entity and the purchase order adequately identifies the contract under which the procurement can be made. Applicable to and specifically for purposes of this agreement, the State of Arizona contract number is ADSPO13-048105. The parties agree as follows:

A. PURPOSE AND TERMS

1. Purpose. The parties have entered into this Agreement for the purpose of retaining Contractor to provide professional services and other deliverables in connection with the development and implementation of Drupal websites and other application maintenance efforts for the Department and the State of Iowa (the “State”), as more fully described in this Agreement and Statement(s) of Work.

2. Term. The initial term of this Agreement is from October 13, 2014, through October 12, 2016, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Department shall have the option to extend/renew this Agreement for up to four additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Department and may be exercised by the Department by providing written notice to Contractor.

B. DEFINITIONS AND GENERAL INFORMATION

The following words shall be defined as set forth below:

- 1. “Acceptance”** means that the Department has determined that one or more Deliverables satisfy the Department’s Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables satisfy the Department’s Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department’s Acceptance Tests.
- 2. “Acceptance Criteria”** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Department and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.
- 3. “Acceptance Tests” or “Acceptance Testing”** mean the tests, reviews and other activities that are performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Department, as

determined by the Department in its sole discretion.

4. **“Contract”** means the collective documentation memorializing the terms of the agreement between the Department and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), these General Terms for Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).

5. **“Contract Declarations & Execution Page(s)”** means the document that contains basic information about the Contract and incorporates by reference these General Terms for Services Contracts, and all other attachments to the Contract Declarations and Executions Page(s).

6. **“Deficiency”** means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

7. **“Deliverables”** means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract.

8. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

9. **“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4), or any successor provision to that section. The term Governmental Entity shall include Iowa agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government. 10.

“Special Contract Attachments” means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

11. **“Special Terms”** means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for Services

Contracts and the Special Terms, the Special Terms shall prevail.

12. “Specifications” means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFP, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

13. “State” means the State of Iowa, the Department, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

C. Duration of Contract.

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Department may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

D. Scope of Work.

The Contractor shall provide Deliverables that comply with and conform to the Specifications.

E. Compensation

- 1. Pricing.** The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms. In consideration of Contractor providing the Department with the Deliverables in accordance with the terms and conditions of this Agreement, Contractor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in a Statement of Work, subject to all terms and conditions of this Agreement. The Department shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Contractor in connection with this Agreement or any Statement of Work. All fees and compensation payable hereunder to Contractor are fixed, not-to-exceed amounts based on the following hourly rates:

Onsite/Remote Resource	Engagement Manager	\$150
Onsite/Remote Resource	Sr. Project Manager	\$140
Onsite/Remote Resource	Project Manager	\$130
Onsite/Remote Resource	Business Analyst	\$130
Onsite/Remote Resource	Technical Architect	\$130

Onsite/Remote Resource	Data Architect	\$130
Onsite/Remote Resource	Lead Developer	\$130
Onsite/Remote Resource	QA Lead	\$125
Offsite/Technology Ctr Resource	Business Analyst	\$95
Offsite/Technology Ctr Resource	Data Architect	\$95
Offsite/Technology Ctr Resource	Lead Developer	\$110
Offsite/Technology Ctr Resource	Sr. Developer	\$75
Offsite/Technology Ctr Resource	Developer	\$55
Offsite/Technology Ctr Resource	QA Lead	\$65
Offsite/Technology Ctr Resource	QA	\$55

2. Invoices / Payment Terms: The Contractor shall submit invoices monthly for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Department may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

3. The State has established rules for limitations on reimbursement expenses. Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

4. Withholding Payments. In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Department or work stoppage by Contractor, in the event the Department determines that: (i) Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency caused by the contractor. No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the Department under this Contract.

5. Setoff Against Sums Owed by the Contractor. In the event that Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, set off any such sum against: (1) any sum invoiced by, or owed to, Contractor under this Contract, or (2) any sum or amount owed by the State to Contractor, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing setoff.

F. Termination.

1. Termination for Cause by the Department. The Department may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Contractor, provided that cure is feasible. In addition, the Department may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- i. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- ii. Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- iii. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- iv. Contractor terminates or suspends its business;
- v. Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- vi. Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- vii. The Department determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Department or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- viii. Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- ix. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- x. Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:

- a. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
- b. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
- c. Making an assignment for the benefit of creditors;
- d. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or
- e. Taking any action to authorize any of the foregoing. The Department's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Department, and the Department shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

2. Termination upon Notice. Following thirty (30) days written notice, the Department may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.

3. Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- i. The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- ii. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or

iii. If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

iv. If the Department's duties, programs or responsibilities are modified or materially altered; or

v. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Contract. The Department shall provide Contractor with written notice of termination pursuant to this section.

4. Limitation of the State's Payment Obligations. In the event of termination of this Contract for any reason by either party (except for termination by the Department pursuant to Section F.1), the Department shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Department is obligated to pay pursuant to this Contract; provided however, that in the event the Department terminates this Contract pursuant to Section F.3, the Department's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section F.4 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Department in accordance with the terms of this Contract. The Department shall not be liable, under any circumstances, for any of the following:

i. The payment of unemployment compensation to Contractor's employees;

ii. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

iii. Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

iv. Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;

v. Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

5. Contractor's Termination Duties. Upon receipt of notice of termination or upon request of the Department, Contractor shall:

- i. Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Department may require.
- ii. Immediately cease using and return to the Department any property or materials, whether tangible or intangible, provided by the Department to Contractor.
- iii. Cooperate in good faith with the Department and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- iv. Immediately return to the Department any payments made by the Department for Deliverables that were not rendered or provided by Contractor.
- v. Immediately deliver to the Department any and all Deliverables for which the Department has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

6. Termination for Cause by Contractor. Contractor may only terminate this Contract for the breach by the Department of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of the Department's receipt of Contractor's written notice of breach.

G. Confidential Information.

1. Access to Confidential Information. The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Department at all times.

2. No Dissemination of Confidential information. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Department, either during the period of the Contract or thereafter. Any data supplied by the Department to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

3. Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

4. Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information in compliance with Iowa Code 715C.

5. Survives Termination. The Contractor's obligations under this section shall survive termination or expiration of this Contract.

H. Indemnification.

1. By the Contractor. The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

- i. Any breach of this Contract;
- ii. Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- iii. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- iv. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the

State of Iowa;

v. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

2. Notification. In the event that a claim is brought against the State for which the State is seeking indemnification under this contract the State will diligently defend against such claim. The State will provide Contractor with notice of any such claim or other circumstance giving rise to Contractor's obligation to defend, indemnify and hold harmless the State. Notwithstanding Section H, Contractor shall not be obligated to indemnify the State for any losses incurred by the State that were caused solely by the negligence of the State or its employees.

3. Survives Termination. Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Department or any other Indemnified Party.

I. Insurance.

1. Insurance Requirements. The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

2. Types and Amounts of Insurance Required. Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

3. Certificates of Coverage. Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract

and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Department. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Department upon execution of this Contract. The certificates shall be subject to approval by the Department. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Department. Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation under this Contract.

4. Waiver of Subrogation Rights. The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

J. Project Management & Reporting.

1. Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

2. Review Meetings. During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

3. Reports. At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

- i. Any event not within the control of the Contractor or the Department that accounts for the problem;
- ii. Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;
- iii. Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

iv. Any request or demand by one party that another party believes is not included within the terms of this Contract.

4. Problem Reporting Omissions. The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

5. Change Order Procedure. The Department may at any time request a modification to the Scope of Work using a change order. The following procedures for a change order shall be followed:

i. Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

ii. The Contractor's Response. The Contractor shall submit to the Department a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.

iii. Acceptance of the Contractor Estimate. If the Department accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.

iv. Adjustment to Compensation. The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

K. Legislative Changes. The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

L. Intellectual Property.

1. Ownership and Assignment of Deliverables. State acknowledges and agrees that except for software owned by third parties, all software, source and object code

including, without limitation, databases, documentation, specifications, manuals, instructions and other data and materials created by Contractor in connection with the Contract including all future domestic and foreign patents, copyrights and trade secrets related thereto are and shall remain exclusively owned by Contractor. Contractor hereby grants State and Governmental Entities non-exclusive, non-revocable, non-transferable license to use, distribute, modify, create derivative works, and license others the right to use the Deliverables.

2. Waiver. To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

3. Further Assurances. At the Department's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Department to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in Section L.1.

4. Data Ownership. The State and Governmental Entities will be and remain the sole and exclusive owners of all data of any kind relating in any way to this Agreement, the Deliverables provided hereunder, and/or Vendor's performance of its duties under this Agreement, including, without limitation, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity).

The Governmental Entity that collects, stores, generates, or maintains information or data shall be considered a Data Custodian. The Data Custodian shall retain ownership of any and all such data, including any data associated with their application at any time. The Data Custodian must approve all access to its data. Except as necessary to perform its express duties under this Agreement, the Contractor is prohibited from accessing, or allowing access to, any State data without the written approval of the Data Custodian. In the interest of clarity, "data" as referred to in this Section L.4 is not intended to refer to Source Code or Software except to the extent that any of these include, incorporate or otherwise utilize data that is owned by the State, including without limitation all data of any kind relating in any way to the Contractor, this Agreement, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Agreement, including, but not limited to, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity), in which case, any such data that is included or incorporated into, or otherwise utilized in connection with, the Contractor's proprietary Source Code or Software shall be and

remain exclusively owned by the State, and Contractor hereby assigns any and all of its right title and interest in and to such data. Also, in the interest of clarity, to the extent Contractor incorporates or uses any data described above or otherwise owned by the State and incorporates such data into reports or other documents, software or deliverables, such data will not lose its status as State-owned data by virtue of such incorporation or use, and Contractor hereby assigns any and all of its right title and interest in and to such data.

M. Warranties.

1. Construction of Warranties Expressed in this Contract with Warranties Implied by Law. Warranties made by the Contractor in this Contract, whether: (a) this Contract specifically denominates the Contractor's promise as a warranty; or (b) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

2. Contractor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder or under any license agreement related hereto without violating any rights of any third party; (ii) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Department herein; and (iii) the Department shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

3. Contractor represents and warrants that: (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) the Department's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Department in writing immediately upon becoming aware of any actual,

potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Department's request and at the Contractor's sole expense: (i) procure for the Department the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. Department For any breach of the above warranty, the State's exclusive remedy, and Contractor's entire liability, shall be the re-performance of the Contract. If Contractor is unable to re-perform the Contract as warranted, the State shall be entitled to recover the fees paid to Contractor up to the value of the contract.

4. Contractor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the 60 day Warranty Period. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five (5) business days of receiving notice of such Deficiencies or failures from the Department or within such other period as the Department specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected Deliverable.

5. Notification and Cure. The State must report any deficiencies in the Deliverables to Contractor in writing within sixty (60) days of performance of the Contract in order to receive warranty remedies. The State may correct any Deficiencies with respect to any Deliverable or cure any Contractor default under this Agreement without prejudice to

any other remedy it may have if Contractor fails to correct such Deficiencies as required in this Agreement or if Contractor otherwise defaults or fails to set a cure period to perform any provision of the Agreement within the time period specified in a notice of default from the State. The State may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Contractor default, in which event Contractor shall reimburse the State for the actual costs incurred by the State for such services (or for the reasonable value of the time expended by any State employees who provide such services). In addition, Contractor shall cooperate with the State or any Third Parties retained by the State who assist in curing such default, including by allowing access to any pertinent materials or work product of Contractor; provided, however, Contractor shall not be required to provide access to its Confidential Information to any Third Party unless such Third Party has executed a written confidentiality agreement with the State containing restrictions against disclosure.

6. Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Department notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Department, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Department any fees or compensation paid to Contractor for the unsatisfactory services.

7. Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Office of the Chief Information officer.

8. Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

N. Acceptance Testing. Except as otherwise specified in the Scope of Work, all Deliverables shall be subject to the Department's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Department certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests; provided,

however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Contractor shall assist the Department in performing Acceptance Tests at no additional cost to the Department if stated in the Statement of Work and at the Department's request. Within a reasonable period of time after the Department has completed its Acceptance Testing, the Department shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Department within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, at its sole option, to:

- i. require Contractor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Contractor;
- ii. refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);
- iii. accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Department's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or
- iv. terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section F.1 of this Contract, the Department may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section F.1. The Department's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Department's satisfaction and the Department has provided Contractor with written notice of Final Acceptance. If the Department determines that all Deliverables satisfy its Acceptance Tests, the Department shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Department's rights to enforce the terms of this Contract or require performance in

the event Contractor breaches this Contract or any Deficiency caused by the contractor is later discovered with respect to such Deliverable(s).

O. Contract Administration.

1. Independent Contractor. The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State or any Department, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Department or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

2. Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when providing Deliverables under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC chapter 4. If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding Department of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

3. Procurement. Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

4. Non-Exclusive Rights. This Contract is not exclusive. The Department reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract.

5. Non-Supplanting Requirement. To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

6. Compliance with Iowa Code chapter 8F. If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Department.

7. Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties.

8. Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

9. Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Department reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

10. Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. Contractor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid court; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Department, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution

of the United States, or otherwise. The Contractor irrevocably consents to service of process by certified or registered mail addressed to the Contractor's designated agent. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law. This Section 10 shall survive termination of this Agreement. "

11. Assignment and Delegation. Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Department. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Department. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Contractor under this Contract.

12. Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

13. Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

16. Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

17. Joint and Several Liability. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

18. Supersedes Former Contracts or Agreements. This Contract supersedes all prior contracts or agreements between the Department and the Contractor for the Deliverables to be provided in connection with this Contract.

19. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

20. Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

- i. At the time it is actually received; or,
- ii. Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- iii. Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

21. Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.

22. Severability. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

23. Time is of the Essence. Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing Deliverables to the Department are responsive to the Department's requirements and requests in all respects.

24. Authorization. Contractor represents and warrants that:

- i. It has the right, power and authority to enter into and perform its obligations under this Contract.
- ii. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

25. Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

26. Records Retention and Access. The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently

and properly document and calculate all charges billed to the Department throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Department, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Department reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

- i. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.
- ii. The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- iii. The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Department.
- iv. The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- v. The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9).

Client records, which are non-medical, must be maintained for a period of five (5) years.

27. Audits. Local governments and non-profit subrecipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Department if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. See A-133 Section 21 for a discussion of subrecipient versus Contractor relationships. Contractor shall provide the Department with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

28. Qualifications of Staff. The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

29. Solicitation. The Contractor represents and warrants that no person or selling Department has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

30. Obligations Beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the termination or expiration of this Contract.

31. Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

32. Delays or Impossibility of Performance. Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that

such prevention, delay, or impossibility is caused by a “force majeure.” The term “force majeure” as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. “Force majeure” does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor’s ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor’s conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a “force majeure” as defined in this Contract. If a “force majeure” delays or prevents the Contractor’s performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Department. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

33. Suspensions and Debarment. The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal Department or Department. The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

34. Conflict of Interest. Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Department that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. If a conflict of interest is proven to the Department, the Department may terminate this Contract, and the Contractor shall be liable for any excess costs to the Department as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from

using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Department.

35. Certification regarding sales and use tax. By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Department may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.

36. Right to Address the Board of Directors or Other Managing Entity. The Department reserves the right to address the Contractor’s board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Department determines appropriateness.

37. Repayment Obligation. In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Department for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

38. Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

39. Reporting Requirements. If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Department on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

40. Immunity from Liability. Every person who is a party to the Contract is hereby notified and agrees that the State, the Department, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor’s and/or subcontractors’ activities involving third parties and arising from the Contract.

41. Public Records. The laws of the State require procurement records to be made public unless otherwise provided by law.

42. Use of Name or Intellectual Property. Contractor agrees it will not use the Department and/or State's name or any of their intellectual property, including but not limited to, any State, state Department, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Department and/or the State.

43. Taxes. The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables.

44. No Minimums Guaranteed. The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

45. Compliance to Iowa IT Policies and Standards

Contractor will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and provide training to Contractor's employees and subcontractors concerning such standards, procedures and protocols. Current standards are accessible online at <http://das.ite.iowa.gov/standards/> Contractor will take all precautions and actions necessary to: (i) prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information; and (ii) ensure that all of the Department's and the State's documentation, electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability. Contractor agrees that it will not copy, reproduce, transmit, or remove any Department (or State) information or data without the prior written consent of the Department. Contractor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the Department or the State as a result of: (a) any breach of this section, or (b) any breaches of security (including those described below) that are caused by any action or omission of Contractor or Contractor's employees, agents and subcontractors. Breaches of security include, but are not limited to:

- a. Disclosure of confidential or sensitive information;
- b. Unauthorized access to Department or State systems;
- c. Illegal technology transfer;
- d. Sabotage or destruction of Department or State information or information systems;
- e. Compromise or denial of Department or State information or information systems;
- f. Damage to or loss of Department or State information or information systems; and
- g. Theft.

The Contractor shall immediately report to the Department any such breach of security. In the event of a breach of this section or any breach of security as

described herein, the Department may terminate this Agreement immediately without penalty or liability to the Department and the State and without affording Contractor any opportunity to cure.

46. Off-Shore Sourcing: The State requires that all state data (including directory data and metadata) stays within the continental United States at all times (at rest and in transport).